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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,975	07/24/2003	John E. Hakala	1072-106.US	1695
7590 Colin P. Abrahams Suite 400 5850 Canoga Avenue Woodland Hills, CA 91367			EXAMINER KIM, CHRISTOPHER S	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 03/05/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/625,975

**Applicant(s)**

HAKALA, JOHN E.

**Examiner**

Christopher S. Kim

**Art Unit**

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-22 and 29-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-85/86)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response filed on December 20, 2007 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

3. Claims 1-22 and 29-31 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 31, 2005.

### ***Claim Rejections - 35 USC § 102***

4. Claims 23-25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Proffit (3,776,464).

Proffit discloses a nozzle comprising:

a wall 28;

a first water deflector comprising:

a plurality of apertures 54;

a second water deflector 58.

5. Claims 23-25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Genbauffs (3,780,954).

Genbauffs discloses a nozzle comprising:

a wall 27;

a first water deflector comprising:

a plurality of apertures 43';

a second water deflector 47.

#### ***Claim Rejections - 35 USC § 103***

6. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Proffit (3,776,464) or Genbauffs (3,780,954) in view of Valtanen et al. (3,217,987).

Proffit and Genbauffs disclose the limitations of the claimed invention with the exception of the upper aperture being larger than the middle aperture which is larger than the lower aperture. Aperture size is knowledge within one of ordinary skill in the art as evidenced by Valtanen. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have made the upper aperture larger than the middle aperture which is larger than the lower aperture in the device of Proffit or Genbauffs as taught by Valtanen for flow pattern and distribution.

#### ***Response to Arguments***

7. Applicant's arguments filed December 20, 2007 have been fully considered but they are not persuasive.

Applicant argues that Proffit does not disclose applicant's claimed nozzle because the term "nozzle" does not appear in the reference. First, the term "nozzle" in the preamble is merely a name for the claimed invention which is defined by the limitations in the body of claim. Second, a "nozzle" is defined as, "a projecting part with an opening, as at the end of a hose, for regulating and directing a flow of fluid." Proffit's device discharges water. Based on applicant's argument, prior art can be patented repetitively by merely naming the device using a term not already used in the prior art reference.

Applicant argues that Proffit does not discharge water at different angles. Applicant is invited to view figures 2 and 3 of Proffit. The water discharged from bores 40 are perpendicular to water discharged from apertures 54. The water discharged from apertures 54 are at different angles as shown in figure 3.

Applicant argues that Proffit's second deflector does not cause water flow into the apertures comprising the first water deflector. Proffit's second deflector 58 along with wall 28 define the flow path for the water. Therefore, second deflector 58 facilitates water flow into the aperture.

Applicant argues that the claim requires that the second deflector be adjacent the apertures of the first deflector. The term "adjacent" is defined as, "lying near, close, or contiguous; adjoining; neighboring." Proffit's figure 6 shows second deflector 58 lying near wall 28 and apertures 54.

Remainder of applicant's arguments directed to Proffit is not commensurate in scope with the claimed invention.

Applicant argues that Genbauffs discloses a burner and not a water deflector. The term "water" is used in a descriptive manner for a name of an element, e.g., "water channel" and "water deflector." Water is not a positively claimed limitation. It is merely recited as an intended use for the claimed invention. Genbauffs' channel and deflectors would also be a water channel and water deflectors if water was supplied to Genbauffs' device. The manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Applicant argues that Genbauffs' apertures do not have different orientations from one another. Applicant is invited to view Genbauffs' figure 7.

Applicant argues that Genbauffs does not show a second water deflector. Genbauffs shows a second water deflector 47.

Applicant argues that none of the references disclose the apertures as being one above the other and having a discharge orientation at an angle to the axis of the channel. It appears that "apertures being one above the other" does not appear to be a limitation of the claimed invention. In both Proffit and Genbauffs, the apertures 54 and 43 have discharge orientations at different angles relative to an axis that is transverse to the longitudinal axis of wall 28 and 27. Applicant claimed invention does not define or limit the "axis" of the "wall defining a water channel" to any particular axis. The "wall defining a water channel" has an infinite number of axis.

Applicant argues that aperture size is not merely knowledge within one of ordinary skill in the art. It is uncertain whether applicant challenging the official notice

for evidence or that it is not obvious to change the aperture size. In either case, Valtanen is provided as evidence for the array of aperture size and motivation for combination.

Applicant is hereby put on notice that any future responses containing inflammatory language will be held non-responsive. 37 CFR 1.3 requires that applicants and their attorneys or agents conduct their business with the United States Patent and Trademark Office with decorum and courtesy. Applicant's following remarks are inflammatory and have no place in prosecution.

**Applicant is at a loss to understand why the Examiner will not read the entire claim when rejecting it. The claims have many features and recited configuration other than the elements selected by the Examiner for use in the refusal, but these have been completely ignored.**

**If the Examiner had read the entire claim 23, he would have noted...**

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher S. Kim/  
Primary Examiner, Art Unit 3752

CK